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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,477	03/01/2004	Hans Scholz	740116-509	7547
22204	7590	08/12/2005	EXAMINER	
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			VU, STEPHEN A	
		ART UNIT	PAPER NUMBER	
		3636		

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/788,477	SCHOLZ, HANS	
	Examiner	Art Unit	
	Stephen A. Vu	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 June 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6 and 11-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-6 and 11-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 6,16, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 6 and 16 recite the limitation "the **cap** joint arrangements" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 20, and 23-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Letendre (#6,402,235).

Letendre shows a saddle, as illustrated in Figures 6-10, comprising two seat halves (60a,60b), a cup joint arrangement (72a,72b) on a bottom side of each of the seat halves (see col. 3, lines 16-16 and col. 4, line 31-33). The cup joint arrangement has a hollow spherical socket and a cup element movable in the socket. A support rod (54) has two supports (64a,64b), wherein each of the supports is attached to a respective cup element. Each of the cup joint arrangements has a range of motion limiter. The cup elements of the cup joint are movable in their respective socket.

With claim 2, the angle between the joint axes is 10 degree (see col. 4, lines 46-47).

With claims 3 and 23, the cup element has a collar one of a top end and a bottom end.

With claims 4 and 24, the edge of the socket and the collar of the cup element are matched to another set.

With claims 5 and 25, an elastic spacer extends between the seat halves.

With claims 6 and 26, the cap joint arrangements are flanged bearings.

With claim 27, each cup joint arrangement is provided under the center of gravity.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 11-19,21-22, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Letendre (#6,402,235).

With claim 11, Letendre discloses the claimed invention except for each support to have an angle extending outwardly of 100 degrees relative the horizontal axis and extending forwardly of 74 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to specify each support to have an angle extending outwardly of 100 degrees relative the horizontal axis and extending forwardly of 74 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With claim 12, Letendre discloses the claimed invention except for the socket to be made of a glass fiber reinforced plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the socket using a glass fiber reinforced plastic material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With claims 13,18, and 29-30, Letendre discloses the claimed invention except for an included angle to be between 50 degrees and 65 degrees, specifically 57 degree. It would have been obvious to one having ordinary skill in the art at the time the invention was made to specify the angle to be between 50 degrees and 65 degrees, since it has been held that where the general conditions of a claim are disclosed in the

prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With claim 14, the cup element has a collar one of a top end and a bottom end.

With claim 15, the edge of the socket and the collar of the cup element are matched to another set.

With claim 16, the cap joint arrangements are flanged bearings.

With claim 17, each cup joint arrangement is provided under the center of gravity.

With claims 19 and 21-22, Letendre discloses the claimed invention except each of the supports to be angled outwardly at an angle of around 100 degree relative to a horizontal plane and inclined forward at an angle relative to a horizontal plane of about 74 degree. It would have been obvious to one having ordinary skill in the art at the time the invention was made to specify each of the supports to be angled outwardly at an angle of around 100 degree relative to a horizontal plane and inclined forward at an angle relative to a horizontal plane of about 74 degree, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

With claim 28, Letendre discloses the claimed invention except that each of the seat halves to have a shape similar to one-half of a heart shape. It would have been an obvious matter of design choice to design the seat halves of Letendre's to have one-half of a heart shape, since applicant has not disclosed that this one-half of a heart shape solves any stated problem or is for any particular purpose.

Response to Arguments

Applicant's arguments filed on June 8, 2005 have been fully considered but they are not persuasive. The applicant has argued that the prior art rejections do not disclose or teach the applicant's invention. The examiner disagrees with this argument. It is best interpreted that the prior art of Letendre shows a saddle, as illustrated in Figures 6-10, comprising two seat halves (60a,60b), a cup joint arrangement (72a,72b) on a bottom side of each of the seat halves (see col. 3, lines 16-16 and col. 4, line 31-33). The cup joint arrangement has a hollow spherical socket and a cup element movable in the socket. A support rod (54) has two supports (64a,64b), wherein each of the supports is attached to a respective cup element. Each of the cup joint arrangements has a range of motion limiter. The cup elements of the cup joint are movable in their respective socket.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Vu whose telephone number is 571-272-6862. The examiner can normally be reached on M-F from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen Vu
August 8, 2005


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600